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RUEHTC/AMEMBASSY THE HAGUE IMMEDIATE 0314
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C O N F I D E N T I A L SECTION 01 OF 03 PHNOM PENH 000168

SIPDIS

STATE FOR EAP/MLS, P, D, L/ESA, IO, DRL, S/WCI

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TAGS: [PREL](#) [KJUS](#) [EAID](#) [PGOV](#) [KTIA](#) [CB](#)

SUBJECT: DONORS URGE RESUMED FUNDING, MORE NEGOTIATION ON
KHMER ROUGE TRIBUNAL ANTI-CORRUPTION MECHANISM

REF: A. LAWLESS-WEST-SIMONOFF-MELLOTT EMAIL (3/13/09)

[1](#)B. SIMONOFF-MELLOTT EMAIL (3/6/09)

[1](#)C. LAWLESS-EAP/MLS EMAIL (2/23/09)

[1](#)D. PHNOM PENH 143

[1](#)E. PHNOM PENH 105

[1](#)F. PHNOM PENH 101

[1](#)G. PHNOM PENH 58

[1](#)H. PHNOM PENH 29

[1](#)I. 08 PHNOM PENH 982

Classified By: Ambassador Carol A. Rodley for reasons 1.4 (B, D)

[1](#)1. (C) SUMMARY: Nearly on the eve of the opening of the first Khmer Rouge trial on March 30, ambassadors from seven major donor nations to the hybrid Khmer Rouge Tribunal (KRT) reviewed March 17 a looming crisis in the funding of the court and a March 23 deadline for resolution by a joint UN-Cambodian team of issues related to corruption on the administrative side of the court (Refs A-C). Most ambassadors reiterated their discussions were informal and were meant to inform each other in advance of making recommendations to their capitals. After considering the "very wide" gaps in the two sides' currently stated positions, but also noting the good progress made since the UN and Royal Government of Cambodia (RGC) first met last December (Ref I), the group reached informal consensus that their capitals should: (1) encourage the UN to accept a February 23 "Joint Statement" to serve as a floor position that should not be altered but from which the two sides should continue to refine additional points; (2) urge that every effort should be made by both sides to continue negotiations, including by a high-level UN delegation present in Phnom Penh; and (3) approve resumption of limited donor funding to the RGC to pay the court's monthly payroll for Cambodian employees and thus avert any interruption to the court's work.

[1](#)2. (C) SUMMARY CONTINUED: Donors in unison agreed with the Australian ambassador's strongly held view that the UN-based KRT Steering Committee should not be invited to make policy recommendations or take decisions outside its narrow terms of reference. Other suggestions included having the UN-RGC Joint Sessions team together give a briefing to the donors in Phnom Penh and urging the two sides to issue a joint communique on March 23 to mark the progress that has been made to date. ECCC Director Sean Visoth -- under a cloud of corruption allegations -- continues on medical leave, and the Japanese and French Ambassadors repeated that Sok An "understands the necessity" of this point. Post seeks

guidance from the Department on these proposals with the view to sharing the USG policy with ambassadors from among the core donors: Japan, France, Australia, and the UK and coordinating a demarche to the UN. END SUMMARY.

Sok An Not Pleased with UN Reading of "Joint Statement"

13. (C) Shortly after the February 23 departure of UN Assistant Secretary-General for Legal Affairs Peter Taksoe-Jensen it became apparent to Deputy Prime Minister and Minister of the Council of Ministers Sok An that the two sides had radically different interpretations of the agreed text (Ref C) of the "Joint Statement," according to a read-out of a March 12 meeting with Sok An by Japanese Ambassador Katsuhiko Shinohara and French Ambassador Jean-Francois Desmazieres. Sok An had briefed Prime Minister Hun Sen that evening about his success. However, in the next day's The Cambodia Daily, the UN interpretation of two key points was contrary to Sok An's understanding. Specifically, the reference to filing of complaints noted they were in "parallel" to "respective" entities on the UN and Cambodian sides. The RGC believed that all Cambodians would file complaints with the Cambodian side, and this was a point of national sovereignty the RGC was not going to give up, Ambassador Desmazieres relayed. (NOTE: The Joint Statement published on February 23 is available on the ECCC website. END NOTE.)

14. (C) There was also a grave difference over the issue of the need for a super-majority if the UN and RGC could not

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agree on actions to take regarding a complaint of wrong-doing by court staff. The Cambodians believed they were requiring a super-majority to take action and not -- as the UN is reported to interpret the clause -- requiring a super majority to halt an action that would otherwise go forward. Since the action in this case would be similar to sentencing a person, according to Ambassador Desmazieres, the rule of super-majority as it applies in the KRT trial chambers would apply. (The UN interpretation is based on the rule of the super-majority in the KRT pre-trial chambers, which is a "matter of process only" said the French ambassador.)

15. (SBU) After the February meeting, Sok An sent a letter March 3 to Taksoe-Jensen reiterating that he would not change the language in the Joint Statement. A letter dated March 9 from Taksoe-Jensen and a follow-on letter March 12 from Sok An only clarified the positions are hardening around one or two points of the text. (Post is sending copies of these letters to the Desk.)

16. (C) "Cambodia has real arguments," said Ambassador Desmazieres, who was supported by the Japanese and Australian Ambassadors. Australia's Margaret Adamson said that "Cambodia is in the right" based on a reading of plain English and the underlying principles at the court.

17. (C) Referring to the March 12 meeting with Sok An, the Japanese Ambassador skillfully referred to Sok An's attitude as "stern and serious." Ambassador Desmazieres bluntly stated Sok An was "furious" and that he was "not accepting" of a post-facto UN interpretation. Continuing, Desmazieres said that Sok An was subsequently upbraided by PM Hun Sen for making a "stupid" agreement and that Sok An characterized this second meeting with the PM as a "slap in the face." Desmazieres made it clear that the RGC would not change the language in the current "Joint Statement."

Next Steps: Floor Position From Which to Negotiate

18. (C) The Japanese and French Ambassadors explained that they coaxed Sok An and the Cambodian negotiating team to continue in the process of negotiating on an acceptable

mechanism to deal with anti-corruption. However, the Japanese Ambassador expressed concern about the wide and deepening gaps between the two sides evident in the exchange of letters. Ambassador Rodley suggested that there might be more choices to consider in the anti-corruption mechanism beyond which side would receive complaints from whom, including further elaboration of points on confidentiality and protections for whistle-blowers. Australian Ambassador Adamson agreed that there was more substance to negotiate. If the UN could be persuaded to accept the current text as a "floor position" -- the minimally acceptable approach -- then both sides could get back to the negotiating table to hammer out more details. EU Charge Dochao-Moreno agreed, stating that donors should acknowledge the negotiations were "going in a good direction," a point which received wide support.

UN Back to the Table?

¶9. (C) Donors were also unified on the need to have either Taksoe-Jensen or a senior UN negotiator with a full mandate return to Phnom Penh to conclude a successful negotiation and an "Exchange of Letters" by March 23. Expressing some dismay with the UN/OLA approach to its relations with the RGC, Ambassador Adamson highlighted that Phnom Penh is where the negotiation is. UK DCM Elizabeth Evans suggested that Taksoe-Jensen be prepared to come to Phnom Penh for up to a week, to spend more time on the problem, to have a conversation, brief the donors on the sticking points, and also to see the work of the court. Australia's Adamson asked if Taksoe-Jensen had visited the court yet. The group as a whole believed that the UN should send a delegation with a mandate to negotiate, to be ready to spend some time and bring the matter to conclusion.

Funding for Cambodian Side

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¶10. (C) The Japanese DCM emphasized another point raised by Sok An -- the imminent depletion of funds on the Cambodian side of the court: Cambodians will be without salaries by the end of March. While withholding funds in the past got the attention of the Cambodians, the DCM feared that it is now being viewed as a form of "international blackmail" by the RGC, which has been engaged in serious negotiations on an anti-corruption mechanism. He recommended that a core group of donors resume funding for at least a month -- a sum of about \$200,000. In response to a suggestion that the amount cover a longer period of time, Canadian Charge Evelyn Coulombe stated the belief that the work would be done more quickly if there was some sense of a finite period. Japan, Australia and France agreed to seek a pool of short-term funds on an urgent, temporary basis, so as to keep the negotiations on track and to show international support for the work of the court.

Suggestions for Further Progress

¶11. (C) The donors received with interest the suggestion by the EU that the two sides issue a Joint Communique by March 23 to summarize the work to date, and noting the Joint Sessions are going in the right direction. The Ambassador's suggestion that the Joint Sessions give a formal briefing to the donors in Phnom Penh was also warmly received. The Australian Ambassador remarked that such an "occasion" would at least bring the two sides together on a joint project. There was no enthusiasm for a visit by the Steering Committee at this time or a digital video conference. The group supported a meeting by Taksoe-Jensen with a full meeting of the broader "Group of Interested States" (GIS), which last met formally in March 2008, as the KRT's new budget was being prepared at the UN.

COMMENT:

¶12. (C) Post recommends that, through formal instructions from the Department to the USUN, we encourage the UN to accept a February 23 "Joint Statement" to serve as a floor position that should not be altered but from which the two sides should continue to refine additional points. We also support the effort to urge that every effort should be made by both sides to continue negotiations, including by a high-level UN delegation present in Phnom Penh. although our position is not critical, we should give moral support to the resumption of limited donor funding to the RGC to pay the court's monthly payroll for Cambodian employees and thus avert any interruption to the court's work. These are the best paths forward and will help the KRT focus on bringing to justice the leaders of the Khmer Rouge-led genocide, five of whom are in detention and one of whom will face trial in less than two weeks in a judicial process that is being widely praised.

RODLEY